

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT RICHARD PRICE,

No. 2:22-cv-0745 AC P

Plaintiff,

v.

STEVE WHITE, et al.,

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Defendants.

Plaintiff, a county prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF No. 2. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account.

These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
2 § 1915(b)(2).

3       II.     Statutory Screening of Prisoner Complaints

4       The court is required to screen complaints brought by prisoners seeking relief against a  
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
6 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
7 “frivolous, malicious, or fail[] to state a claim upon which relief may be granted,” or that “seek[]  
8 monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

9       A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”  
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
11 Cir. 1984). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal  
12 theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639,  
13 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as  
14 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a  
15 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.  
16 Franklin, 745 F.2d at 1227-28 (citations omitted).

17       “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
18 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
19 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550  
20 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
21 “Failure to state a claim under § 1915A incorporates the familiar standard applied in the context  
22 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman,  
23 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure  
24 to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a  
25 cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the  
26 speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain  
27 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally  
28 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur

1 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

2 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
3 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting  
4 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual  
5 content that allows the court to draw the reasonable inference that the defendant is liable for the  
6 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this  
7 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.  
8 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the  
9 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,  
10 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

11 III. Complaint

12 The complaint alleges that Sacramento Superior Court Judges White and Sawtell and  
13 United States Magistrate Judges Peterson and Barnes violated plaintiff’s constitutional rights by  
14 failing to schedule court hearings after he sent them letters regarding a threat to his life. ECF No.  
15 1. Plaintiff seeks unspecified compensation, the dismissal of “current charges,” and that his  
16 appeal be granted. Id. at 4.

17 IV. Failure to State a Claim

18 The Supreme Court has held that judges acting within the course and scope of their  
19 judicial duties are absolutely immune from liability for damages under § 1983. Pierson v. Ray,  
20 386 U.S. 547, 553-54 (1967). “A judge will not be deprived of immunity because the action he  
21 took was in error, was done maliciously, or was in excess of his authority; rather, he will be  
22 subject to liability only when he has acted in the ‘clear absence of all jurisdiction.’” Stump v.  
23 Sparkman, 435 U.S. 349, 356-57 (1978) (quoting Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 351  
24 (1871)). A judge’s jurisdiction is quite broad, and its scope is determined by the two-part test  
25 articulated in Stump:

26 The relevant cases demonstrate that the factors determining whether  
27 an act by a judge is a “judicial” one relate to [1] the nature of the act  
28 itself, *i.e.*, whether it is a function normally performed by a judge,  
and [2] to the expectations of the parties, *i.e.*, whether they dealt with  
the judge in his judicial capacity.

1       Id. at 362.

2           Each named judge's alleged failure to schedule a hearing falls squarely within the scope  
3 of functions "normally performed by a judge" and was done while acting in the capacity of a  
4 judge. Defendants are therefore absolutely immune from liability under § 1983 and the claims  
5 against them must be dismissed without leave to amend.

6           To the extent plaintiff appears to be seeking an order from the court directing defendants  
7 to issue specific orders, such relief is unavailable. With respect to the state court judges, "[t]he  
8 federal courts are without power to issue writs of mandamus to direct state courts or their judicial  
9 officers in the performance of their duties." Clark v. Washington, 366 F.2d 678, 681 (1966)  
10 (citations omitted); Demos v. United States Dist. Ct., 925 F.2d 1160, 1161 (9th Cir. 1991)  
11 ("[T]his court lacks jurisdiction to issue a writ of mandamus to a state court." (citing 28 U.S.C.  
12 § 1651)). Actions which seek "to obtain a writ in this court to compel a state court to take or  
13 refrain from some action . . . are frivolous as a matter of law." Demos, 925 F.2d at 1161-62.

14           Any such relief is similarly unavailable with respect to the federal magistrate judge  
15 defendants. See Mullis v. United States Bankr. Ct., 828 F.2d 1385, 1392-93 (9th Cir. 1987)  
16 ("horizontal appeal" from one district court to another improper and "district court lacks authority  
17 to issue a writ of mandamus to another district court" (citations omitted)); see also In re McBryde,  
18 117 F.3d 208, 225 n.11 (5th Cir. 1997) ("[T]he structure of the federal courts does not allow one  
19 judge of a district court to rule directly on the legality of another district judge's judicial acts or to  
20 deny another district judge his or her lawful jurisdiction." (alteration in original) (citation  
21 omitted)). Because there is no relief plaintiff can obtain against these defendants, the claims  
22 against them must be dismissed.

23           V.      No Leave to Amend

24           Leave to amend should be granted if it appears possible that the defects in the complaint  
25 could be corrected, especially if a plaintiff is pro se. Lopez v. Smith, 203 F.3d 1122, 1130-31  
26 (9th Cir. 2000) (en banc). However, if, after careful consideration, it is clear that a complaint  
27 cannot be cured by amendment, the court may dismiss without leave to amend. Cato v. United  
28 States, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

The undersigned finds that, as set forth above, the complaint fails to state a claim upon which relief may be granted and amendment would be futile. The complaint should therefore be dismissed without leave to amend.

**VI. Plain Language Summary of this Order for a Pro Se Litigant**

Your request to proceed in forma pauperis is granted and you are not required to pay the entire filing fee immediately.

It is being recommended that your complaint be dismissed without leave to amend because you cannot bring claims under § 1983 against judges.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.

2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.

§ 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the appropriate agency filed concurrently herewith.

3. The Clerk of the Court shall randomly assign a United States District Judge to this action.

IT IS FURTHER RECOMMENDED that the complaint be dismissed without leave to amend for failure to state a claim.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned “Objections to Magistrate Judges Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: May 4, 2022

Allison Claire  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE